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Before the
Federal Communications Commission
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

Interconnection between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

TO: The Commission

COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT") by its attorneys, respectfully
files these Comments in response to the Commission's August 18, 1997 Further Notice of
Proposed Rulemaking in this proceeding.¹

In its Third Order on Reconsideration the Commission ruled, inter alia, that
Competitive Local Exchange Carriers ("CLECs") "that take shared or dedicated transport
as an unbundled network element [from Incumbent Local Exchange Carriers ("ILECs")]
may use such transport to provide interstate exchange access service to customers to
whom [they] provide local exchange service."² The central issue raised in the Further
Notice is whether CLECs should be thus entitled even regarding customers to whom they
do not provide local exchange service.³ For the reasons explained fully herein, the

¹ Third Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-98
and 95-125 (FCC 97-295), released August 18, 1997 ("Further Notice").

² Id. at par. 38.

³ Id. at par. 61.

Commission's decision described above poses severe technical problems for SWBT, and its Further Notice proposal would serve only to exacerbate those problems and to create new industry problems in several areas.⁴

I. BACKGROUND

Transport is the path between points in the public switched network ("PSN"). These paths run between end offices and between end offices and tandems. Often in the local distribution network, the paths are direct between end offices. These paths can be either dedicated or shared. This means that the paths do not utilize the local tandem, but instead run directly from one end office to another. Such is the case for the majority of local traffic in SWBT's territory. Other times, however, the path between offices runs through a tandem. This path is chosen where there is insufficient traffic to justify a direct path.

The individual links of the local distribution network (i.e., end office to tandem, tandem to end office, and end office to end office) are shared transport in that they carry the traffic of a number of different parties. These paths carry local traffic originated by SWBT's local customers and, more recently, by the local customers of CLECs that employ Unbundled Network Element (UNE) switching to serve their customers. The paths also carry the traffic of Interexchange Carriers (IXCs) that wish to collect or terminate traffic to the local customers whose service resides in the end office switch. Finally, these paths also carry the traffic of other local exchange and interconnecting

⁴ These Comments are not intended to be, and should under no circumstances be read as, a request for Commission reconsideration of any aspect of the Third Order on Reconsideration. Rather, SWBT has chosen as its vehicle for challenging that Order a petition for review filed on September 5, 1997 with the Eighth Circuit Court of Appeals. Problems created by that Order are mentioned herein only to explain and support SWBT's positions on the issue raised in the Further Notice.

companies (e.g., other ILECs, wireless providers, etc.) that wish to receive traffic from or deliver traffic to customers whose local service is provided from the end office switch.

SWBT makes make these shared transport paths available to all who wish to use them.

II. THE COMMISSION'S PROPOSAL IS NOT TECHNICALLY FEASIBLE.

A major difficulty that SWBT has with the Third Order on Reconsideration as exacerbated by the Further Notice is that its existing technical network construct does not permit the changes required by the Order or proposed by the Further Notice. Unlike the case of access, the network does not have the capability to identify multiple local service providers in its switch, and as a result, SWBT is unable to bill differently for services which terminate to an unbundled switch port.

The impacts of this network reality are many. For example, when a party originates a local call destined for a facilities-based provider's local customer, the signal which accompanies the call cannot identify whether the call is from a SWBT customer or the local customer of a CLEC that uses an Unbundled Switch Port to provide local service.

Similarly, when an Unbundled Switch Port originates an interexchange call, the switch follows the direction specified by the IXC for processing the call, regardless whether the call was initiated by a SWBT or a CLEC local customer. The instructions provided by the IXC are communicated to SWBT via the Common Block Translations Questionnaire associated with Access Ordering. These instructions tell SWBT's switches how to handle the calls from an IXC's customer. The IXC will advise to hand off the call to a dedicated transport path, to send it to the tandem for hand off to the IXC, or perhaps to hand off at the end office to a provider's collocation arrangement. Access charge rules

have typically governed how the IXC pays for the switching and transport associated with an interexchange call. The network signals associated with these interexchange calls carry information about the IXC so that such calls can travel over shared transport paths to the tandem, along with the interexchange calls of other IXCs, and be handed off properly at the tandem to the correct IXC interconnection point.

When a call originates from a SWBT end office destined to terminate to an end user served by a facility-based CLEC, it will travel to the interconnection point designated by the facility-based CLEC. This routing decision is made by the originating switch, based upon the NPA NXX of the called number. If this interconnection point is not the end office where the call originated, the call will travel over a shared transport path to the interconnection point, typically a tandem. There is nothing in the signal associated with this call to separately identify calls from SWBT's customers versus those of CLECs who utilize UNE switching. Essentially the same situation exists for all interconnecting networks. The switch makes its routing decision based on the dialed digits and the instructions provided by the interconnecting party regarding the hand off point.

The common thread in all these originating call scenarios is that the calls are routed based upon instructions from the party by whom the calls will be completed, not the local service provider. Billing for both the end office switching and the transport has typically been directed to the interconnecting party without regard to who owned the switch port from which the call originated.

SWBT's network terminates all types of calls to customers served by its end office switches. These calls may be local calls originated by other local customers in SWBT's own or some other company's switches, or calls originated by other ILEC switches, or

calls originated by wireless customers, or interexchange calls handled by IXC's. While local calls originated by SWBT's customers may travel a direct shared transport route to the terminating end office, and although some IXC's choose to hand off their calls directly to the terminating office, more often than not calls are transported to the tandem and given to SWBT to terminate at the end office. Once a call leaves the tandem on its way to the end office, there is technically no way to identify who provided the call for termination. All recordings for billing of access and interconnection are made at the tandem without regard to whether the line number is SWBT's customer or the customer of a UNE switch port CLEC.

Because the current network construct does not provide for differentiation between access calls that are made by SWBT's end user customers and those made by the customers of CLECs that utilize Unbundled Local Switching (ULS), the only way that SWBT could possibly meet the requirements of the Third Order on Reconsideration and the Further Notice proposal would be to take each and every access recording and bounce it against a table in which we would maintain a list of Unbundled Local Switch ports. The volume of current access records makes it technically infeasible to perform this additional process during billing and still bill access in a timely fashion with SWBT's current network/billing capabilities.

Through the use of its Advanced Intelligent Network (AIN) platform, SWBT plans eventually to be able to modify the standard operation of its network in a way that will cause an originating access record to be created that will differentiate originating access dialed from ULS ports as opposed to that dialed from SWBT's end users. This modification, scheduled for completion by first quarter 1998, will permit SWBT to bill

CLECs for originating access at UNE rates and to provide CLECs with call records that will permit the CLEC to bill the IXC for access. We have not yet found a way, however, to address this issue as it relates to originating 800 calls nor terminating access.

This is an industry problem in that the Further Notice would demand treatment of access that the Public Switched Network is currently incapable of accomplishing. ILECs should be permitted to bill access as business as usual until such time as an efficient and cost effective solution to this network design problem is found.

Further, demands by AT&T and others suggesting that ILECs should somehow compensate UNE-based CLECs for the inability to bill access to IXCs through the use of factors and formulas is simply inappropriate. The 1996 Act did not contemplate that ILECs should be required to make major modifications to their networks in order to accommodate UNE-based CLECs.⁵

The Further Notice asks about expanding the use of UNE elements for access by IXCs who do not provide local service to the end user. From an operational standpoint, this exacerbates the problems outlined above in that SWBT must not only decide which access calls to bill to the CLEC rather than the IXC, but now must also bill the remaining IXC shared or dedicated transport charges based on which rate, access or UNE, is the most desirable. Because UNE rates are typically negotiated rates, the requirement to permit IXCs to use UNE elements - - even where they do not provide local service - - also requires that SWBT negotiate these UNE rates with the IXC.

⁵ See Iowa Utilities Board v. FCC, No. 96-3321, Slip Op., July 18, 1997, at 140 ("We also agree with the petitioners' view that subsection 251(c)(3)[47 U.S.C. Section 251(c)(3)] implicitly requires unbundled access only to an incumbent LEC's existing network - - not to a yet unbuilt superior one" [emphasis in original]).

III. THE COMMISSION'S PROPOSAL WOULD DISSERVE THE PUBLIC INTEREST IN SEVERAL IMPORTANT RESPECTS.

The Communications Act clearly establishes bifurcated jurisdiction over the regulation of telecommunications services. Section 152(b) denies the Commission jurisdiction over intrastate communications, granting intrastate oversight exclusively to state regulatory bodies. Section 202(b) of the Act grants the FCC jurisdiction over charges for communications services, which is expressly limited to interstate or foreign communications by subsection 152(a). If adopted, the Commission's proposal would effectively transfer regulation of jurisdictionally interstate traffic to state commissions. State commissions have no authority to "accept" this responsibility and have not agreed to undertake this task.

The Commission's proposal would effectively result in a significant abdication of the Commission's responsibilities under the Act to ensure reasonable rates and promote universal service. At the present time, ILECs can only offer interstate services subject to intensely restrictive regulation. In addition to the myriad rules contained in Parts 36, 61 and 69, the Commission has imposed on the ILECs numerous policies it deemed necessary to protect consumers from unreasonable discrimination. For example, ILECs are generally restricted from offering individual case basis pricing or responding to customer requests for proposals with custom contracts. Prior to now, the Commission felt each of these rules and policies was necessary to protect the public interest.

Now the Commission proposes to transfer a significant portion of its responsibilities under the Act to state commissions without the statutory authority to do so. Carriers so choosing would be able to substitute UNEs for access at their discretion.

Hundreds of pages of access charge rules would remain in effect, but could be ignored by carriers choosing to acquire interstate access as UNEs through intrastate agreements.

The Commission lacks the authority to implement its proposal. The Commission can, under the Act, forbear from regulation of interstate access services. However, the Act contains no provision that allows the Commission to authorize carriers to mischaracterize jurisdiction of requested services in order to "tariff shop" a lower intrastate rate. As such, the Commission's proposal is impermissible.

The Commission's access charge plan was designed to promote universal service. The Commission has yet to identify the totality of subsidies embedded in current rates and fund them in a competitively neutral manner. The Commission's proposal would simply ignore the existing subsidies and seriously jeopardize the underpinnings of the Act's universal service goals. Further, the Commission's plan would not allow carriers a reasonable opportunity to recover current costs and would therefore be confiscatory. The costs allocated to the interstate jurisdiction would be unrecoverable, as the majority of services would be purchased through intrastate agreements. The Commission cannot simply walk away from its responsibilities to regulate interstate telecommunications. The Commission's proposal should not be adopted.

IV. CONCLUSION

The requirements of the Third Report and Order and the Further Notice proposal would compel SWBT to perform functions not technically permitted by the current network construct, create huge jurisdictional revenue shifts, eviscerate the current access charge plan, and threaten universal service. Therefore, the proposal should not be adopted.

Respectfully submitted,

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October 2, 1997

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY" in CC Docket No.96-98 and No. 95-185 has been filed this 2nd day of October, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", is written over a horizontal line.

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